APPENDIX

Exhibit A

Quotes from U.S.C. concerning jurisdiction of The Supreme Court of the United States.

28 USC section 1257 (3)

"(3)By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 USC section 2106

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

42 USC section 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity,

Exhibit A

(continued)
or other proper proceeding for redress."
28 USC section 1343(3)
"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

ALABAMA STATUTES
Code of Ala. 1975, section 27-23-2 states,
"Rights of judgment creditors."
"Upon the recovery of final judgment against any person... for loss or damage to property, if the defendant in such action was insured against the loss or damage at the time when the right of action arose, the judgment creditor shall be entitled to have the insurance money provided for in the contract of insurance between the insurer and the defendant applied to the satisfaction of the judgment, and if the judgment is not satisfied within 30 days after the date when it is entered, the judgment creditor may proceed against the defendant and insurer to reach and apply the insurance money to the satisfaction of the judgment."
(Emphasis added.)

Code of Ala. 1975, section 27-5-6 states,
"Casualty insurance" defined.
"(a) "Casualty insurance" includes:
...(4) BURGLARY AND THEFT. -- Insurance against loss or damage by burglary, theft, ...or wrongful conversion, disposal..."

Exhibit B

"THE STATE OF ALABAMA ---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

Julia L. Asam

80-855 v.

American Liberty Insurance Co., et al.

Appeal from Tuscaloosa Circuit Court

SHORES, JUSTICE.

"This is an appeal from an order discharging Julia L. Asam's $250,000 garnishment claim against American Liberty Insurance Company. Asam had earlier obtained a default judgment against American Liberty's insured, Willard O. Stanley, d/b/a Poodle Palce, in the amount of $250,000.

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"Asam's complaint against Stanley alleged the following:

"COUNT ONE

"1. On or about the 7th day of August, 1976, Plaintiff and Defendant entered into an agreement by which Defendant promised to feed, water, care for, and transplant two hundred fifty (250) white mice, which were being used in the carrying on and operating a research cancer project.

"2. Defendant breached the agreement by failing to feed, water, care for, and transplant said mice according to his agreement with the Plaintiff causing the loss of said mice to the damage of the Plaintiff.

"Wherefore Plaintiff demands judgment

Exhibit B

(continued)
against Defendant in the sum of Two Hundred Fifty Thousand and no/100 ($250,000.00) Dollars, interest and costs.

"COUNT TWO

"1. Sometime between the 7th day of August, 1976, and the 18th day of October, 1976, Defendant converted to his own use two hundred fifty (250) white mice being used in cancer research project of the value of Two Hundred Fifty Thousand and No/100 ($250,000.00), the property of Plaintiff.

"Wherefore Plaintiff demands judgment against Defendant in the sum of Two Hundred Fifty Thousand and No/100($250,000.00) Dollars, interest and costs."

"After obtaining her default judgment, Asam then filed her garnishment claim against American Liberty. American Liberty answered that it was not liable to Stanley under the policy of insurance and was not responsible to pay any sums for or on behalf of Stanley. The court agreed and discharged American Liberty. Plaintiff appeals. We affirm.

"The two issues pertinent to this appeal are:

"(1) Were the actions of Stanley covered by the policy

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"with American Liberty so as to make American Liberty subject to Asam's writ of garnishment?

"And, if so, (2) did Stanley fail to perform the notice condition of the policy, thereby breaching the condition precedent to the company's liability?

"It is not necessary to address the latter issue because we hold that the

Exhibit B

(continued)
claim by Asam against Stanley was not covered under the terms of the insurance policy.

"In her brief, Asam contends that three types of coverage in the insurance policy are applicable to her loss. These are: (1) the comprehensive general liability policy; (2) the general policy floater covering animals in the care, custody, and control of Mr. Stanley; and (3) the commercial umbrella insurance liability policy.

"The general liability policy, in pertinent part, provides coverage as follows:

"The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury or (B) property damage to which this insurance applies, caused by an occurrence...."

"An "occurrence" is defined in the policy as an "accident, including continuous or repeated exposure to conditions, which results...in ...property damage neither expected nor intended fron the standpoint of the insured."

"The general liability policy also contains certain exclusions pertinent to this appeal:

"This insurance does not apply:

"(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named

insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

Exhibit B

(continued)

". . . .

"(k) to property damage to

". . . .

"(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control....

". . . .

"(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

"(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

"(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or duratility warranted or represented by the named insured. ..." (Emphasis added.)

"In Employers Insurance Company of Alabama v. Jeff Gin Company, 378 So. 2d 693, 695 (Ala. 1979), this Court held that:

"It is a general rule of construction that exceptions to coverage must be interpreted as narrowly as possible for the insured. Further, such exceptions must be construed most strongly against the company drafting and issuing the policy."

"Additionally, the Court held that:

"It is a fundamental rule of insurance law that courts construe insurance contracts in a manner to give effect to the intent of the parties; however, any ambiguities in the policy are to be resolved in favor of the insured. Billups v. Alabama Farm Bureau Mutual Casualty Insurance Company, 352 So. 2d 1097 (Ala. 1977). This Court has

Exhibit B

(continued)
Page 5 80-855

"frequently held that provisions of insurance policies must be construed in light of the interpretation that ordinary men would place on the language used. Universal Underwriters Insurance Company v. Marriott Homes, Inc., 286 Ala. 231, 238 So. 2d 730 (1970)."
378 So. 2d at 695.

"Asam argues that exclusion (k) is ambiguous when read with exclusions (a) and (m). She asserts that, while exclusion (k) provides an exclusion for property damage to property in the care, custody, or control of the insured, the fact that exclusions (a) and (m) provide exceptions to exclusions for a warranty of fitness and quality and for property that has been physically injured or destroyed should cause the clauses to be interpreted to mean that damage to physical property (e.g. a tin can) would not be covered, but coverage would be provided for workmanship and/or destruction of or injury to animals. She concludes that this reasoning is valid because the obvious intent of the parties would be to provide liability insurance to Stanley's business and both parties knew at the outset that his principal occupation concerns the care and custody of animals.

"After careful review of the insurance policy, we find that the exclusions provided under the general liability policy are not ambiguous and can be logically read independently of the others.

"For example, exclusion (a) provides an exception for situations where Stanley could be liable after selling items used

Exhibit B

(continued)
"in conjunction with his business, such as equipment, grooming instruments, medication, and the like. Also, exclusion (m) could apply to situations where Stanley under-

"took to repair an item and failed to do so. In these contexts, exclusions (a) and (m) do not create ambiguity when read along with (k).

"Therefore, we hold that the exclusion in the policy for liability assumed under contract is valid and avoids coverage under the general liability policy.

"Asam alternatively claims that the commercial umbrella excess liability policy should apply because it specifically covers liability assumed under contract and has no exclusion that would prohibit coverage.

"The policy reads in pertinent part:

"The company will indemnify the insured for ultimate net loss in excess of the retained limit hereinafter stated which the insured may sustain by reason of liability imposed upon the insured by law, or assumed under any contract or agreement by the named insured or by any officer, director, stockholder or employee of the named insured while acting within the scope of his duties as such, for damages because of (a) Personal Injury, (b) Property Damage ... caused by or arising out of an occurrence happening anywhere in the world during the policy period." (Emphasis added.)

"The pertinent exclusion to this policy states:

"This policy does not apply:

Exhibit B

(continued)

"To the insured's liability for bodily injury or property damage, direct or consequential, and expenses on account of loss arising out of real and personal property held by or in the care, custody or control of the insured in any capacity as trustee, guardian, executor, administrator, custodian, escrow tenant or otherwise." (Emphasis added.)

"Asam reasons that the wording of the umbrella policy indicates that the policy's purpose was not to just provide excess coverage, but rather to expand the coverage to protect

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"against gaps in the underlying policies and would thereby include the present situation. In support, Asam cites the New Jersey Supreme Court case of Bryan Construction Company v. Employers Surplus Lines Insurance Company, 60 N.J. 375, 290 A. 2d 138 (1972).

"While we find sound reasoning in Asam's argument that the umbrella policy does more than just provide excess coverage, we are nevertheless constrained to hold that Asam's situation with Stanley falls directly within the cited exclusion to the policy, thereby prohibiting coverage.

"We also hold that the general property floater, which insures "animals on insured premises while in his care, custody and control with a $500 maximum per animal subject to a $5,000 policy limit" against certain specified perils, does not provide coverage here simply because Asam failed to prove that any of the specified perils caused the loss of the mice.

"The judgment is affirmed.

"AFFIRMED.

"Torbert, C. J., Maddox, Jones, and

Exhibit B

(continued)
"Adams, JJ., concur."

"I, J.O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court. Witness my hand this 19 day of Mar.,1982.

/s/J.O. Sentell
Clerk, Supreme Court of Alabama"

Exhibit C

"Office of Clerk of the Supreme Court
State of Alabama
Montgomery
Mailing address:
P.O. Box 157
Montgomery, Alabama 36101
Telephone: 832-6480
April 23, 1982 RE: 80-855

Julia L. Asam
Appellant
vs.
American Liberty Insurance Company, et al.
Appellee

"You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:...
"XXXXXX Application for rehearing overruled. No opinion written on rehearing.

/s/ J.O. Sentell
Clerk, Supreme Court of
Alabama"

4-23-82
wo

Exhibit D

"IN THE CIRCUIT COURT FOR TUSCALOOSA COUNTY, ALABAMA

JULIA L. ASAM,
Plaintiff
vs.
WILLARD O. STANLEY,
Defendant
vs.
AMERICAN LIBERTY INSURANCE COMPANY,
Garnishee

Civil Action no. CV-78-408

"JUDGMENT DISCHARGING GARNISHEE"

"Plaintiff having controverted the Answer of the garnishee, American Liberty Insurance Company, and the issues having been heard by the Court, non-jury, on 26 May 1981, and the Court having heard and considered the same is of the opinion that said garnishee has fully and completely answered the Writ of Garnishment herein and that such garnishee was not indebted to the defendant when the process of garnishment was received or at the time of making of the Answer or during the intervening time and had not in its possesion or control any belongings of the defendant and is, therefore, entitled to be discharged.

"IT IS, THEREFORE, CONSIDERED AND ORDERED that the garnishee, American Liberty Insurance Company, be, and hereby is, discharged from the Writ of Garnishment herein and is hereby awarded costs as provided by law, which such costs are taxed against the plaintiff, for which let execution issue.

"This the 31 day of July, 1981.

s/Fred W. Nicol
Circuit Judge"

(Record p. 144 and p. 145).

Exhibit E

"IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA.

JULIA L. ASAM, Plaintiff, Civil Action no. CV-78-408

vs.

WILLARD O. STANLEY Defendant.

DEFAULT JUDGMENT ENTERED BY COURT

"This action came on the motion of the Plaintiff for a default judgment pursuant to Rule 55(b)(2) of the Alabama Rules of Civil Procedure, and the Defendant having been duly served with the summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and his default having been duly entered and the Defendant having taken no proceedings since such default was entered,

"It is Ordered and Adjudged, that the Plaintiff recover of the Defendant damages in the amount of $250,000.00, interest and her costs of action.

"Done at Tuscaloosa County, Alabama, this 24 day of April, 1979.

s/ Fred W. Nicol
Circuit Judge Presiding

DOCKET OF ENTRY OF DEFAULT

"Default entered against Defendant, Willard O. Stanley, this 24th day of April, 1979.

s/Doris T. Turner
Clerk

(Record p. 11.)

Exhibit F

"GENERAL PROPERTY FLOATER
THIS POLICY COVERS:
"1. On the following property not exceeding the amount specified with respect to each of the items described, against loss or damage thereto, directly caused by the risks and perils insured against.
"Animals on insured's premises while in his care, custody and control with $500 maximum per animal subject to a $5,000 policy limit." (Emphasis added.)
"TERRITORIAL LIMITS
"2. This policy covers within the limits of the Continental United States & Canada.
"THIS POLICY INSURES AGAINST DIRECT LOSS OR DAMAGE CAUSED BY:
(a) Fire and Lightening;
(b) Cycline, Tornado, Windstorm and Hail;
(c) Explosion, excepting explosion originating in steam boilers, steam pipes, steam turbines, or steam engines;
(d) Riot and riot attending strikes;
(e) Aircraft or objects falling therefrom;
(f) Vehicles running on land or tracks (not owned or operated by the assured or his employees);
(f) Smoke or smudge due to sudden, unusual or faulty operation of any heating or cooking unit;
(h) Collision, derailment or overturning of transporting conveyances, (coupling of conveyances not to be deemed a collision) except as hereinafter provided;
(i) Burglary, Holdup and Robbery, except as hereinafter provided. (Emphasis added.)
...
"EXCLUSIONS
4. This policy does not insure against:
(a) Loss or damage caused by wear, and tear and gradual depreciation, moth, vernin, inherent vice;
(b) Loss caused by or during any process of

Exhibit F

(continued)
"refinishing, renovating or repairing;
(c) Loss caused by dampness of the atmosphere or extremes of temperature;
(d) Loss or damage caused by carelessness or rough handling by the Assured or the Assured's employees;
(e) Loss or damage caused by smoke or smudge from fireplaces or industrial apparatus, or from heating or cooking units unless such units are connected to a chimney by a smoke pipe;
(f) Loss or damage caused by war, invasion, hostilities, rebellion, insurrection, contraband or illegal transportaion & or trade;
(g) Loss or damage caused by burglary from a building or vehicle unless such building or vehicle was locked and there is evidence of forcible entry. ..."

(Record p. 193).